

2013 DRAFTING REQUEST

Senate Substitute Amendment (SSA-AB462)

Received: 3/14/2014	Received By: phurley
Wanted: As time permits	Same as LRB: s0391
For: Glenn Grothman (608) 266-7513	By/Representing:
May Contact:	Drafter: phurley
Subject: Criminal Law - miscellaneous	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email: **Sen.Grothman@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Revenge pornography

Instructions:

Incorporate assembly amendment for public figures, plus changes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 3/14/2014	evinz 3/14/2014	jfrantze 3/14/2014	_____	srose 3/14/2014	srose 3/14/2014	
/2			jfrantze 3/14/2014	_____	lparisi 3/14/2014	lparisi 3/14/2014	

FE Sent For:

<END>

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2771/3
PJH:wlj&eev&cjs:jm

2013 ASSEMBLY BILL 462

October 22, 2013 - Introduced by Representatives SPIROS, JOHNSON, BALLWEG, BARCA, BERCEAU, BIES, BROOKS, CZAJA, KAHL, KLEEFISCH, MARKLEIN, NASS, OHNSTAD, A. OTT, PRIDEMORE, THIESFELDT and TITTL, cosponsored by Senators VUKMIR, L. TAYLOR, LEHMAN and RISSER. Referred to Committee on Criminal Justice.

- 1 **AN ACT** *to create* 942.09 (1) (d) and 942.09 (3m) of the statutes; **relating to:**
2 distributing a sexually explicit image without consent and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, no one may photograph, videotape, or otherwise capture an image of a nude or partially nude person (depicted person) without the depicted person's knowledge and consent. A person who does so, or who possesses, reproduces, or distributes the image with the knowledge that the image was captured without the depicted person's knowledge or consent, is generally guilty of a Class I felony, and may be fined up to \$10,000, imprisoned for up to three years and six months, or both.

Under this bill, no one may reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate (distribute) an image of a person who is nude or partially nude or who is engaging in sexually explicit behavior without the consent of the person, regardless of whether the depicted person consented to the capture of the image. A person who does so is guilty of a Class A misdemeanor and may be fined up to \$10,000, imprisoned for up to nine months, or both.

Under the bill, the prohibition does not apply if the person depicted consented to the distribution for commercial purposes. The bill creates exceptions for parents or legal guardians who distribute otherwise legal representations of their minor children for noncommercial purposes, for law enforcement officers acting in their official capacity, and for persons who distribute the representations for the purpose of reporting or assisting with the investigation of a crime.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a

ASSEMBLY BILL 462

report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 942.09 (1) (d) of the statutes is created to read:

2 942.09 (1) (d) "Sexually explicit conduct" has the meaning given in s. 948.01
3 (7).

4 **SECTION 2.** 942.09 (3m) of the statutes is created to read:

5 942.09 (3m) (a) Whoever, without the consent of the person represented,
6 reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a
7 representation of a nude or partially nude person or of a person engaging in sexually
8 explicit conduct is guilty of a Class A misdemeanor. The consent of the person
9 represented to the capture of the representation or to the possession of the
10 representation by the actor is not a defense to a violation of this subsection.

11 (b) This subsection does not apply to any of the following:

12 1. The parent, guardian, or legal custodian of the person represented if the
13 ^{private} representation does not violate s. 948.05 or 948.12 and the reproduction,
14 distribution, exhibition, publication, transmission, or other dissemination is not for
15 commercial purposes.

16 2. A law enforcement officer or agent acting in his or her official capacity in
17 connection with the investigation or prosecution of a crime.

18 3. A person who is not the actor and who reproduces, distributes, exhibits,
19 publishes, transmits, or otherwise disseminates the representation to a law
20 enforcement officer or agency for the purpose of reporting a crime or for the purpose

ASSEMBLY BILL 462

1 of assisting a law enforcement officer or agent in an investigation or prosecution of
2 a crime.

3 (c) This subsection does not apply if the person represented *described* consented to the
4 reproduction, distribution, exhibition, publication, transmission, or other
5 dissemination of the representation for commercial purposes.

6 (END)

still relevant



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB:0394

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SENATE SUBSTITUTE AMENDMENT,

TO SENATE BILL ~~367~~ 462

ASSEMBLY

54
non

gen cat

1 **AN ACT** *gen cat*; **relating to:** posting or publishing a sexually explicit image without
2 consent and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 942.09 (1) (bg) of the statutes is created to read:
4 942.09 (1) (bg) "Post or publish" includes posting or publishing on the Internet.

5 **SECTION 2.** 942.09 (1) (bn) of the statutes is created to read:

6 942.09 (1) (bn) "Private representation" means a representation depicting a
7 nude or partially nude person or depicting a person engaging in sexually explicit
8 conduct that is intended by the person depicted in the representation to be captured,
9 viewed, or possessed only by the person who, with the consent of the person depicted,

1 captured the representation or to whom the person depicted directly and
2 intentionally gave possession of the representation.

3 **SECTION 3.** 942.09 (1) (d) of the statutes is created to read:

4 942.09 (1) (d) "Sexually explicit conduct" has the meaning given in s. 948.01
5 (7).

6 **SECTION 4.** 942.09 (3m) of the statutes is created to read:

7 942.09 (3m) (a) Whoever does any of the following is guilty of a class A
8 misdemeanor:

9 1. Posts, publishes, or causes to be posted or published, a private representation
10 if the actor knows that the person depicted does not consent to the posting or
11 publication of the private representation.

12 2. With the intent to cause humiliation or embarrassment to the person
13 depicted, posts, publishes, or causes to be posted or published, a depiction of a person
14 that he or she knows is a private representation, without the consent of the person
15 depicted.

16 (b) This subsection does not apply to any of the following:

17 1. The parent, guardian, or legal custodian of the person depicted if the private
18 representation does not violate s. 948.05 or 948.12 and the posting or publication is
19 not for commercial purposes.

20 2. A law enforcement officer or agent acting in his or her official capacity in
21 connection with the investigation or prosecution of a crime.

22 3. A person who posts or publishes a private representation that is newsworthy
23 or of public importance.

24 (END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0392/1

PJH:eev:jf

2
mvr

- NOW -

SENATE SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 462

if the Web site may
be viewed by the
general public.

1 AN ACT *to create* 942.09 (1) (bg), 942.09 (1) (bn), 942.09 (1) (d) and 942.09 (3m)
2 of the statutes; **relating to:** posting or publishing a sexually explicit image
3 without consent and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

a Web site on

4 SECTION 1. 942.09 (1) (bg) of the statutes is created to read:
5 942.09 (1) (bg) "Post or publish" includes posting or publishing on the Internet.

6 SECTION 2. 942.09 (1) (bn) of the statutes is created to read:

7 942.09 (1) (bn) "Private representation" means a representation depicting a
8 nude or partially nude person or depicting a person engaging in sexually explicit
9 conduct that is intended by the person depicted in the representation to be captured,
10 viewed, or possessed only by the person who, with the consent of the person depicted,

1 captured the representation or to whom the person depicted directly and
2 intentionally gave possession of the representation.

3 **SECTION 3.** 942.09 (1) (d) of the statutes is created to read:

4 942.09 (1) (d) "Sexually explicit conduct" has the meaning given in s. 948.01
5 (7).

6 **SECTION 4.** 942.09 (3m) of the statutes is created to read:

7 942.09 (3m) (a) Whoever does any of the following is guilty of a Class A
8 misdemeanor:

9 1. Posts, publishes, or causes to be posted or published, a private representation
10 if the actor knows that the person depicted does not consent to the posting or
11 publication of the private representation.

12 2. With the intent to cause humiliation or embarrassment to the person
13 depicted, posts, publishes, or causes to be posted or published, a depiction of a person
14 that he or she knows is a private representation, without the consent of the person
15 depicted.

16 (b) This subsection does not apply to any of the following:

17 1. The parent, guardian, or legal custodian of the person depicted if the private
18 representation does not violate s. 948.05 or 948.12 and the posting or publication is
19 not for commercial purposes.

20 2. A law enforcement officer or agent acting in his or her official capacity in
21 connection with the investigation or prosecution of a crime.

22 3. A person who posts or publishes a private representation that is newsworthy
23 or of public importance.

24 (END)

24 4. A provider of electronic communication services
that provides Internet access service to customers and
does not use the service for